IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15702 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G.S.R.T.C. - Petitioner(s)

Versus

M.G. SUVAR- Respondent(s)

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Appearance :

MR Ashish M. Dagli for Petitioner No(s).: 1.
MR JS Brahmbhatt for Respondent No(s).: 1.
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CORAM :HON'BLE MR JUSTICE M.R. SHAH

Date : 29/06/2005

ORAL JUDGMENT

With the consent of the learned advocates appearing for the parties, the matter is heard finally today.

2. In this petition under Article 226/227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and award passed by the Labour Court, Godhra, dated 19th March 2004 in Reference (LCG) No. 315 of 1992 in partly allowing the said Reference directing the petitioner to reinstate the respondent with continuity of service and all other consequential benefits, however with 25% backwages.

3. The respondent workman was serving as a Helper with the petitioner Corporation. On allegation that he was absent without getting leave sanctioned for the period from 16th July 1990 to 13th August 1991 the respondent workman was chargesheeted and disciplinary enquiry was initiated against him. After completing departmental inquiry and having proved the charges against him the disciplinary authority passed an order dismissing the respondent workman from services. The respondent workman raised industrial dispute challenging his dismissal. Inspite of the fact that the charges are proved against the

respondent workman according to whom remaining absent unauthorisedly and without getting the leave sanctioned is a misconduct only and that the punishment of dismissal is too harsh for such misconduct, the Labour Court by judgment and order dated 19th March 2004 quashed and set aside the order of dismissal passed by the disciplinary authority exercising the power under Section 11-A of the ID Act and directed the petitioner to reinstate the respondent workman with 25% backwages, however with continuity in service. Being aggrieved and dissatisfied with the same, the petitioner Corporation has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Ashish M. Dagli, learned advocate appearing for the petitioner Corporation has vehemently submitted that having held that remaining absent unauthorisedly without getting the leave sanctioned is a misconduct and when the charges of unauthorised absenteeism is proved against the respondent workman, only on the ground that there is no past misconduct

and it is the first default the Labour Court ought not to have set aside the order of dismissal in exercise of powers under Section 11-A of the ID Act. It is also further submitted that the respondent workman was unauthorisedly absent for the period from 16.7.1990 to 13.8.1991, i.e., for a period of one year and one month and that in between by notices dated 24.7.1990, 10th August 1990, 20th March 1991 and 26.7.1991 the respondent workman was directed to report for duty and inspite of such notices served upon the respondent he did not report for duty nor was there any reply from the respondent No.1 at all and therefore it can be said that the respondent workman has lost interest in the service. It is therefore submitted that by showing misplaced sympathy the Labour Court ought not to have set aside the order of dismissal.

5. Shri Dagli has relied upon the judgment of the Hon'ble Supreme Court in the case reported in Delhi Transport Corporation Vs. Sardar Singh 2004 III-LLJ Page 543 and has submitted that as observed by the Hon'ble Supreme Court when an employee absents himself from duty

without sanction of leave for a longer period it prima facie shows that there is a lack of interest in work and habitual absence is a factor which establishes lack of interest in work. He has relied upon another judgment of the Hon'ble Supreme Court in the case of Viveka Nand Sethi Vs. Chairman, J & k Bank Ltd & Ors. reported in 2005(4) Supreme Page 232 that even in a case where even the application was submitted for granting of leave after the period of leave was over it is held that mere sending of an application for grant of leave much after the period of leave was over as also the date of resuming duties can be said to be an act of misconduct on the part of the workman. Shri Dagli, learned advocate has also relied upon the judgment of the learned Single Judge of this Court in the case of Gujarat State Road Transport Corporation vs. Chimanlal R. Varghi, reported in 2002(3) GLH 29 and has submitted that as held by the learned Single Judge of this Court in the aforesaid decision that once it is concluded by the Labour Court that the charge is proved and the findings of the Enquiry Officer where proper substitution of penalty by the Labour Court was not justified and that the Labour

Court has exceeded in its jurisdiction. It is therefore submitted that by quashing and setting aside the order of dismissal and directing the petitioner to reinstate the respondent workman on the ground that it is his first default and there is no past misconduct and by merely observing that the punishment of dismissal will be too harsh the Labour Court has shown misplaced sympathy which requires to be quashed and set aside by this Court.

6. On the other hand, Shri Brahmbhatt, learned advocate appearing on behalf of the respondent workman has submitted that as he was sick he could not report for duty and considering the fact that there was no past misconduct and it was his first default when the Labour Court has exercised the jurisdiction under Section 11-A of the ID Act and has quashed and set aside the order of dismissal by not paying 75% backwages it is requested to dismiss the present Special Civil Application. Shri Brahmbhatt has relied upon the judgment of the learned Single Judge of this Court in the case of Gujarat State Road Transport Corporation Vs. Sarfudin K. Saiyed, reported in 2002

(95) FLR 257 and has submitted that in that case also where there was a charge of absence without prior permission and even the workman has remained absent in the departmental enquiry, this Court has held that no serious misconduct was committed and the punishment of dismissal was harsh and disproportionate and therefore it is requested to dismiss the present Special Civil Application.

7. Heard the learned advocates appearing on behalf of the parties. It is not in dispute that the respondent workman was absent from duty unauthorisedly during the period from 16.7.1990 till 13.8.1991. There was no application submitted by the respondent workman for getting the leave sanctioned. The petitioner was chargesheeted on 20th August 1991. In between by notices dated 24.7.1990, 10.8.1990, 20.3.1991 and 26.7.1991 the respondent was directed to report for duties but there was no response from the respondent workman at all and thereafter the respondent workman was chargesheeted. Neither any leave report nor any medical report was submitted by the respondent workman. The charge of unauthorised

absenteeism is proved against the respondent workman not only by the disciplinary authority but also by the Labour Court. It is also held by the Labour Court that remaining absent without leave is a misconduct. In view of the aforesaid finding and the charge proved against the respondent workman who was absent for a longer period of one year and one month, if the respondent workman is dismissed from service, it cannot be said that there is any illegality committed by the disciplinary authority. As held by the Hon'ble Supreme Court in the case of Delhi Transport Corporation (supra), when an employee absents himself from duty without sanctioned leave for a very longer period it prima facie shows lack of interest in work. Habitual absence is a factor which establishes lack of interest in work. In the above set of circumstances and when ample opportunities were given to the respondent workman to report for duties and still the workman absents himself from duty without getting the leave sanctioned and even without submitting report and medical certificate, it hardly matters whether any past default was there or not. Once the charge is proved and departmental inquiry is

held to be legal and proper, it should be left to the disciplinary authority as to what punishment should be imposed. Merely on the ground that there was no past default and it is his first misconduct by quashing and setting aside the order of dismissal the Labour Court has shown misplaced sympathy in favour of the respondent workman and while exercising the jurisdiction under Section 11-A of the ID Act it has exceeded in its jurisdiction in quashing and setting aside the order of dismissal. As held by the Hon'ble Supreme Court in catena of judgments, mere observance that the punishment would be too harsh and/or disproportionate is not enough and sufficient to invoke jurisdiction under Section 11A of the ID Act, and for that purpose the Labour Court and/or the Industrial Court is required to give cogent reasons while coming to the conclusion that the punishment imposed is shockingly disproportionate. In the present case, only on the ground that it is the first default and there was no past misconduct and observing that the punishment of dismissal will be too harsh, the Labour Court has set aside the order of dismissal exercising powers under Section 11A of

the ID Act, which, as held by the learned Single Judge of this Court in the case of Gujarat State Road Transport Corporation (supra), would be exceeding the jurisdiction by the Labour Court. The Judgment of the learned Single Judge, which is relied upon by the learned advocate appearing on behalf of the respondent workman, will not be applicable to the facts of the present case and also in view of the subsequent ruling of the Hon'ble Supreme Court. Even on facts also, the same will not be applicable as in the present case there is a long absenteeism, the respondent workman was given ample opportunities to report for duties, and there was no report and/or Medical Report submitted by the respondent workman. In the case cited by the learned advocate, there was a Medical Report submitted by the respondent workman and the learned Single Judge has dismissed that Special Civil Application.

8. For the reasons stated hereinabove, as the Labour Court has exceeded in its jurisdiction in interfering with the punishment of dismissal while holding that the charge is proved against the

respondent workman, the present petition is required to be allowed and it is accordingly allowed. The impugned judgment and award passed by the Labour Court, Godhra dated 19th March 2004 in Reference (LCG) No. 315 of 1992 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.

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